

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HERBERT E. TOWNSEND,

Plaintiff,

v.

BROOKS SPORTS, INC.,

Defendant.

CASE NO. 17-1322

ORDER CONTINUING THE STAY

On April 11, 2018, the Court issued an order granting Defendant Brooks Sports Inc.’s (“Brooks Sports”) Motion to Stay Pending Inter Partes Review. Dkt. No. 101 (the “Stay Order”). The parties subsequently jointly reported to the Court that the Patent Trial and Appeal Board (“PTAB”) had instituted *inter partes* review (the “IPR”) of all claims of U.S. Patent No. 7,490,416 challenged by Brooks Sports. Dkt. No. 104. On August 31, 2018, the Court ordered the matter to remain stayed and the parties to file a joint status report within 14 days of any final decision by the PTAB. Dkt. No.105.

In 2019, the parties reported to the Court that the PTAB issued a Final Written

1 Decision (“FWD”) in the IPR finding all challenged claims unpatentable. Dkt. No. 106. The  
2 parties further notified the Court that at that time, the time to request rehearing and the time to  
3 appeal that decision had not yet expired. *Id.*

4 The Court issued a Minute Order on November 19, 2021, stating that the parties “last  
5 updated the Court on the status of this matter on July 1, 2020, and no action has occurred since.”  
6 Dkt. No. 111. The Court directed the parties to file a joint status report no later than December 6,  
7 2021 advising the Court of the status of this matter. *Id.* In response, the parties filed a timely  
8 joint status report notifying the Court that Townsend has appealed the FWD to the Court of  
9 Appeals for the Federal Circuit, the appeal is currently pending, briefing on the appeal is not yet  
10 complete, and briefing is expected to complete before March 2022. Dkt. No. 112.

11 Based on the foregoing and for the reasons previously set forth by the Court, the Court  
12 orders that this matter shall remain stayed. The parties shall file a joint status report within 30  
13 days of a decision on the appeal by the Court of Appeals for the Federal Circuit. In that joint  
14 status report, the parties should advise the Court of the status and disposition of the appeal,  
15 address whether the stay in this matter can be lifted and if so, whether any of the previously filed  
16 motions should again be placed on the Court’s calendar for a decision, and request remaining  
17 deadlines for prompt resolution of the case.

18 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
19 to any party appearing pro se at said party’s last known address.

20 Dated this 12th day of January, 2022.

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Lauren King  
23 United States District Judge  
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